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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
10/675,500	09/30/2003	Allen Reeves		6049

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Arthur W. Fisher, III
Suite 316
5553 West Waters Avenue
Tampa, FL 33634

EXAMINER

SAGER, MARK ALAN

ART UNIT	PAPER NUMBER
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3714

MAIL DATE	DELIVERY MODE
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01/24/2008

PAPER

Please find below and/or attached an Office communication concerning this application or proceeding.

The time period for reply, if any, is set in the attached communication.

Supplemental
Office Action Summary

Application No.

10/675,500

Applicant(s)

REEVES, ALLEN

Examiner

M. A. Sager

Art Unit

3714

-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) OR THIRTY (30) DAYS, WHICHEVER IS LONGER, FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133). Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

Status

- 1) ☒ Responsive to communication(s) filed on 26 September 2007.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

Disposition of Claims

- 4) ☒ Claim(s) 29-32 is/are pending in the application.
- 4a) Of the above claim(s) _____ is/are withdrawn from consideration.
- 5) ☐ Claim(s) _____ is/are allowed.
- 6) ☒ Claim(s) 29-32 is/are rejected.
- 7) ☐ Claim(s) _____ is/are objected to.
- 8) ☐ Claim(s) _____ are subject to restriction and/or election requirement.

Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on _____ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
Replacement drawing sheet(s) including the correction is required if the drawing(s) is objected to. See 37 CFR 1.121(d).
- 11) ☐ The oath or declaration is objected to by the Examiner. Note the attached Office Action or form PTO-152.

Priority under 35 U.S.C. § 119

- 12) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some * c) ☐ None of:
1. ☐ Certified copies of the priority documents have been received.
 2. ☐ Certified copies of the priority documents have been received in Application No. _____.
 3. ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).

* See the attached detailed Office action for a list of the certified copies not received.

Attachment(s)

- | | |
|--|---|
| 1) <input type="checkbox"/> Notice of References Cited (PTO-892) | 4) <input type="checkbox"/> Interview Summary (PTO-413)
Paper No(s)/Mail Date. _____ |
| 2) <input type="checkbox"/> Notice of Draftsperson's Patent Drawing Review (PTO-948) | 5) <input type="checkbox"/> Notice of Informal Patent Application |
| 3) <input type="checkbox"/> Information Disclosure Statement(s) (PTO/SB/08)
Paper No(s)/Mail Date _____ | 6) <input type="checkbox"/> Other: _____ |

Claim Objections

1. Claims 29-32 are objected to because of the following informalities: spelling of 'wage' line 26 of claim 29 rather than --wager-- at least since specification and original claimed invention pertained to bets/wagers rather wages. Appropriate correction is required.

Claim Rejections - 35 USC § 103

2. Claims 29-32 are rejected under 35 U.S.C. 102(b) as anticipated by Lermusiaux or, in the alternative, under 35 U.S.C. 103(a) as being unpatentable over Lermusiaux in view of either Chichester (5772512) or Giobbi (2001/0046893). This holding is maintained from prior action for cited claims as reiterated herein. Lermusiaux discloses a video game wagering device (10) for wagering on football game (fig. 1-3) comprising all claimed structure including a video screen (14, 32) and a selector control panel (ref. 16, 18) including a plurality of selector control keys (4:3-20, 4:28-54, ref. 20, 34, 36, 38, 40) to selectively generate a corresponding plurality of game selection and control signals including play selection and wagering selections (20, 34, 36, 38, 40), a microprocessor as a mini-computer (3:61-64) including game data (5:2-48, 50, 52, 5:66-6:3, ref. 54, 56, 58, 60), comprising a plurality of wager selections (34, 38), including a plurality of play wager selections and further a plurality of period wager selections, wherein said plurality of wager selections comprises a first and second set of wagers wherein said first set of wagers is a plurality of game period wager selections and said second set of wagers is a plurality of play wager selections (4:63-7:5, ref. 34, 38), a plurality of play selections includes a plurality of sets of said play selections such as run, pass or field goal (5:33-54), and a game plan (5:9-54) and game situation profile (5:9-36) and a data processing section including logic (5:33-7:5, ref. 64) to receive the game selection signals from the selector control keys to generate display

signals in response to the game selection signals to be displayed on the video screen (5:33-36, 6:15-21) in response to operator input from the selection control keys and to generate a game play image on the video screen of the selected play executed against the game plan and the game situation profile and display the wagering results (4:63-7:5, fig. 1-3). Thus, Lermusiaux discloses claimed structure of gaming device including a plurality of play wager selections and a plurality of period wager selections as wager selections (34, 38). Essentially, claimed structure of play wager selections or/and period wager selections fails to differentiate from Lermusiaux wager selections in so far as Lermusiaux teaches a plurality of wager selections that is same structure for same purpose such as input keys that transmit signal indicating the placement of a wager. While features of an apparatus may be recited either structurally or functionally, claims directed to an apparatus must be distinguished from the prior art in terms of structure rather than function. *In re Schreiber*, 128 F.3d 1473, 1477-78, 44 USPQ2d 1429, 1431-32 (Fed. Cir. 1997) (The absence of a disclosure in a prior art reference relating to function did not defeat the Board's finding of anticipation of claimed apparatus because the limitations at issue were found to be inherent in the prior art reference); see also *In re Swinehart*, 439 F.2d 210, 212-13, 169 USPQ 226, 228-29 (CCPA 1971); *In re Danly*, 263 F.2d 844, 847, 120 USPQ 528, 531 (CCPA 1959). "[A]pparatus claims cover what a device is, not what a device does." *Hewlett-Packard Co. v. Bausch & Lomb Inc.*, 909 F.2d 1464, 1469, 15 USPQ2d 1525, 1528 (Fed. Cir. 1990) (emphasis in original). In this case, Lermusiaux discloses a plurality of wager selections that teaches claimed plurality of wagers including play wager selections and/or plurality of period wager selections.

Alternatively, where 'play' wager selections or 'period' wager selections distinguish from Lermusiaux (which Office maintains at this juncture that claim language 'play' or 'period' of respective wager selection [input device] does not differentiate structurally from the plurality of wager selections taught by Lermusiaux), Lermusiaux teaches a plurality of wager selections as wager amount but fails to disclose a plurality of 'play' wager selections and a plurality of 'period' wager selections, as claimed, where play wager selection is a wager on a [individual] play while period wager selection is a wager on a period [of play]. Chichester discloses an electronic football game that permits a player to wager on an individual play, on the period of play or on the game (7:55-56, 7:61-8:14, 11:30-64, figs 4-9) thereby teaching a plurality of wager selections including a plurality of play wager selections and a plurality of period wager selections, further wherein said plurality of wager selections comprises a first and second set of wagers wherein said first set of wagers is a plurality of game period wager selections and said second set of wagers is a plurality of play wager selections so as to permit game state wagering thereby increasing wagering opportunities for player or to allow wagering on game state statistics. Essentially, Chichester teaches/suggests to an artisan at a time prior to the invention, allowing a player to wager on game state statistics or to allow increased wagering opportunities such as wagering on stats in a period or on individual play or on game. Similarly, Giobbi discloses a system and method for playing virtual football wagering game on a gaming device (paragraphs 24-35, 37) that allows a user to select from a plurality of plays (paragraphs 24-29), to select a plurality of wager selections including play wager selections (paragraphs 24-32) and period wager selections such as on the series of plays or on the game (paragraphs 30-32) thereby teaching a plurality of wager selections including a plurality of play wager selections and a

plurality of period wager selections, further wherein said plurality of wager selections comprises a first and second set of wagers wherein said first set of wagers is a plurality of game period wager selections and said second set of wagers is a plurality of play wager selections so as to permit game state wagering thereby increasing wagering opportunities for player or to allow wagering on game state statistics. Thus, similarly Giobbi teaches/suggests to an artisan at a time prior to the invention, allowing a player to wager on game state statistics or to allow increased wagering opportunities such as wagering on stats in a period or on individual play or on game. Thus, it would have been obvious to an artisan at a time prior to the invention to add a plurality of play wager selections, a plurality of period wager selections, further wherein said plurality of wager selections comprises a first and second set of wagers wherein said first set of wagers is a plurality of game period wager selections and said second set of wagers is a plurality of play wager selections as taught/suggested by either Chichester or Giobbi to Lermusiaux so as to increase wagering opportunities for player or to allow wagering on game state statistics. The combination of Lermusiaux in view of either Chichester or Giobbi taken as a whole at a time prior to the invention suggests to an artisan a gaming device comprising all claimed structure/features including a plurality of play wager selections, a plurality of period wager selections, and further wherein said plurality of wager selections comprises a first and second set of wagers wherein said first set of wagers is a plurality of game period wager selections and said second set of wagers is a plurality of play wager selections to allow a player to wager on game state statistics or to allow increased wagering opportunities such as wagering on stats in a period or on individual play or on game. Further, alternatively, in consideration of US Supreme Court Decision regarding KSR, Lermusiaux discloses video gaming device comprising a plurality of

wager selections as wager amount but fails to disclose a plurality of play wager selections and a plurality of period wager selections, as claimed, where play wager selection is a wager on a [individual] play while period wager selection is a wager on a period [of play]. However, as shown above incorporated herein, Chichester or Giobbi each disclose video game device teaching a plurality of play wager selections and a plurality of period wager selections as additional propositional betting options so as to increase player's betting options while increasing revenue from increase in player bets. Thus, it would have been obvious to an artisan to add a plurality of play wager selections and a plurality of period wager selections as taught in either Chichester or Giobbi to improve the video game device of Lermusiaux for the predictable result of permitting additional betting options for players thereby increasing revenue from the game based on increased wagering.

Response to Arguments

3. Applicant's arguments filed Sep 26, 2007 have been fully considered but they are not persuasive. The Office maintains that cited response is non-responsive as an incomplete reply for the reasons stated in Notice, mailed 10/18/07, incorporated herein. However, as a service to Applicant, a response is provided. As stated in Notice, Applicant alleges patentability in cited arguments that states in part on page 2-3 in remarks 'none of the references teach or suggest the structure claimed in newly submitted independent claim 29' (and claims 30-32 due to depending from 29); thus, in reply, Applicant's arguments fail to comply with 37 CFR 1.111(b) because they amount to a general allegation that the claims define a patentable invention without specifically pointing out how the language of the claims patentably distinguishes them from the references. The Office has met its burden by providing evidence as cited in holding above,

incorporated herein, showing what the reference(s) teach to an artisan when taken as a whole at a time prior to the invention. Finally, it is noted that neither the 'play' wager selection nor the 'period' wager selection is defined in so far as 'play' and 'period' are each wager selections [input device] that is not defined in claim language in a manner to differentiate from the plurality of wager selections taught by Lermusiaux or, alternatively, over Lermusiaux in view of either Chichester or Giobbi when taken as a whole at a time prior to the invention.

Conclusion

4. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

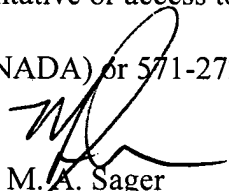
5. Any inquiry concerning this communication or earlier communications from the examiner should be directed to M. A. Sager whose telephone number is 571-272-4454. The examiner can normally be reached on T-F, 0700-1730 hours.

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If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Robert Pezzuto can be reached on 571-272-6996. The fax phone number for the organization where this application or proceeding is assigned is 571-273-8300.

Information regarding the status of an application may be obtained from the Patent Application Information Retrieval (PAIR) system. Status information for published applications may be obtained from either Private PAIR or Public PAIR. Status information for unpublished applications is available through Private PAIR only. For more information about the PAIR system, see <http://pair-direct.uspto.gov>. Should you have questions on access to the Private PAIR system, contact the Electronic Business Center (EBC) at 866-217-9197 (toll-free). If you would like assistance from a USPTO Customer Service Representative or access to the automated information system, call 800-786-9199 (IN USA OR CANADA) or 571-272-1000.



M. A. Sager
Primary Examiner
Art Unit 3714

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